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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91197504
Party	Defendant Alpha Phi Omega
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

OMEGA, S.A.,

OPPOSER,

v.

ALPHA PHI OMEGA,

APPLICANT.

Opposition Nos.
91197504 (Parent) &
91197505 (Child)

Serial Nos.
77950436 & 77905236

**NOTICE OF SUPPLEMENTAL LEGAL AUTHORITY PERTINENT TO
ALPHA PHI OMEGA’S MOTION FOR SUMMARY JUDGMENT**

Comes the Applicant, Alpha Phi Omega, by counsel and pursuant to TBMP § 528.05(a)(1), Applicant hereby brings to the attention of the Board supplemental legal authority issued after briefing of the summary judgment motion, namely, *Juice Generation, Inc. v. GS Enters. LLC*, 2015 U.S. App. LEXIS 12456 (Fed. Cir. July 20, 2015). This is a precedential decision from the Federal Circuit relevant to the issues under consideration in this opposition.

In *Juice Generation*, the Federal Circuit vacated a Board decision which sustained an opposition holding that PEACE LOVE AND JUICE for juice bar services is likely to be confused with a family of marks containing PEACE & LOVE for restaurant services. In summary, the Federal Circuit held the Board “did not properly consider the three-word combination of Juice generation’s mark as a whole in comparing it to the two-word combination in GS;s marks.” *Id.*, 2015 U.S. App. LEXIS 12456 , at *1. Pursuant to TBMP § 528.05(a)(1), Applicant submit this decision and the reasoning resulting in same is relevant to the issues under consideration in this summary judgment motion for two reasons.

FIRST, even when a mark subsumes a preexisting mark of another, to focus on that fact when the component subsumed in the Applicant’s mark is a component in various third party

marks in the industry, and to focus on the component part subsumed within the Applicant's mark, rather than Applicant's mark "in its entirety," are "[b]oth errors [which] are significant given the evidence in this case, which includes a substantial number of third-party marks incorporating the phrase 'peace and love' in connection with restaurant services . . . the bulk of which are three-word phrases much like Juice Generation's mark." *Id.*, 2015 U.S. App. LEXIS 12456 , at *7.

SECOND, when the fact of third-party use of other marks in the same line of goods or services is "uncontradicted," that is adequate proof without the requirement of further evidence about the "extent of sales or promotional efforts surrounding the third-party marks." *Id.*, 2015 U.S. App. LEXIS 12456 , at *8-9 ("the 'specifics' as to the extent and impact of use of the third parties' marks may not have been proven, but in the circumstances here, Juice Generation's evidence is nonetheless powerful on its face. The fact that a considerable number of third parties use similar marks was shown in uncontradicted testimony").

IN SUMMARY, Applicant submits this supplemental authority is relevant to the issues under consideration in this summary judgment motion, namely the fact that it is not disputed that various fraternities have the word OMEGA in their names.

Respectfully requested,

/jackawheat/

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CERTIFICATE OF SERVICE AND ELECTRONIC SUBMISSION

I hereby certify that a true copy of this NOTICE OF SUPPLEMENTAL LEGAL AUTHORITY PERTINENT TO ALPHA PHI OMEGA'S MOTION FOR SUMMARY JUDGMENT is being filed electronically with the U.S. Patent and Trademark Office using the ESTTA service, and a courtesy copy has been served upon Opposer's Lead Counsel by electronic mail and a copy has been served on counsel for Opposer by mailing said copy this 11th day of August, 2015, via First Class Mail, postage prepaid, to:

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